

Post-Hearing Questions for the Record

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By letter dated March 24, 2015, the Chairman of the Committee, Senator Charles E. Grassley, requested responses to the questions from three members of the Committee. Below, are my responses.

Response to Questions from Senator Charles E. Grassley

- **Do you believe that the replacement of Southern California Edison workers by H-1B workers discussed at the hearing is allowed under the H-1B laws, and if so, do you believe it should continue to be legal?**
- **In your written testimony you state that “skilled immigrant workers do not take American jobs, but complement American workers.” How is this an accurate statement in light of the layoffs that happened at Southern California Edison, Northeast Utilities, and other companies around the country?**

I don't know the facts and details of the Southern California Edison case beyond what I have read or heard on the news, so I can't comment on or characterize that situation. If I have learned anything in my 17 years in Washington working on immigration it is that drawing conclusions about complex issues based on news reports is almost never a good idea.

What I do know as a general matter is that with any government program and policy there are examples of abuse or misuse. The question is how to respond, in a way that gets at problems without interrupting the policy goals. Immigration law is already incredibly complex and has created bureaucracies in government agencies and within the private sector to attempt to sort through the complex rules and procedures. Adding more complexity to that system often creates less clarity for the people trying to use the system and the government agencies who are responsible for overseeing it.

Congress has created mechanisms to address nondisplacement and related concerns surrounding the protection of American workers, and the first effort should be to ensure that the laws are followed and where needed updated. Creating complex rules for all businesses that use H-1B workers based on the abuses committed by a few bad actors is

short-sighted. As described in my written testimony, there is abundant evidence that, over all, immigrant workers complement native-born workers—they do not generally substitute for native-born workers. Furthermore, the skills which H-1B workers bring with them increase the productivity of native-born workers, which serves to boost their wages and the revenue of the companies in which they are employed.

Response to Questions from Senator David Vitter

4. You said that foreign workers positively impact the wages and employment opportunities of native-born workers across our economy in you opening statement, but the rising number of unemployed recent college graduates and the firsthand account of Infosys’s desire to bring in cheap labor through these various programs tell a different story. How do you reconcile your views with the reality of large companies abusing the programs?

Anecdotes are no substitute for evidence. The available evidence shows that H-1B workers do not drive down wages for native-born workers and they do not “steal” jobs from the native-born. In fact, workers on H-1B visas earn higher wages than employed U.S.-born workers with bachelor’s degrees. Moreover, from 2009 to 2011, wage growth for U.S.-born workers with at least a bachelor’s degree was nominal, but wage growth for workers in occupations with large numbers of H-1B petitions was substantially higher.¹ Moreover, unemployment rates are low for occupations that employ large numbers of H-1B workers. Many STEM occupations in particular have very low unemployment compared to the overall national unemployment rate.² These low unemployment rates signal a demand for labor that exceeds the supply.

Just because a small number of businesses may have misused the H-1B program does not mean that it is a bad program—or that all H-1B employers are dishonest. All of the available evidence indicates that the H-1B visa plays a critical role in filling gaps in our labor market in a way that is faster and more efficient than the much longer process that exists for issuing permanent visas. The current program has mechanisms in place to ensure that employers are following the rules. Before simply adding more bureaucracy our first approach must be to ensure that the current rules are enforced and that the agency enforcing the rules has the tools and resources needed to do the job well. Moreover, in light of the compelling evidence of a shortage of workers in the high-use H-1B occupations, it would make no sense to ignore the need for expanding the cap simply because there are allegations of abuse by some users.

5. You also referred to these foreign workers on visas as “skilled” in a blanket manner, yet there a quite a few immigrants using the program that are not skilled as evidenced through

¹ Jonathan T. Rothwell and Neil G. Ruiz, “H-1B Visas and the Stem Shortage: A Research Brief” (Washington, DC: The Brookings Institution, 2013), pp. 8-9.

² Information Technology Industry Council, the Partnership for a New American Economy, and the U.S. Chamber of Commerce, Help Wanted: The Role of Foreign Workers in the Innovation Economy (Washington, DC: December 2012), pp. 2-3.

testimony and other information submitted into the record. Will you continue to use that term in such a broad manner after hearing and reading the information presented during the hearing?

The Immigration and Nationality Act (INA) sets forth strict requirements for skilled workers who want to participate in the H-1B program. They must be employed in a specialty occupation and they must have a bachelor's degree or equivalent. And 20,000 additional H-1B visas are allocated for professionals with graduate degrees from U.S. universities.

6. In your testimony, you praised the Optional Training Program for foreign students, despite it being used to circumvent the H-1B program and supply large corporations with cheap foreign labor because there are no requirement that the OPT workers be paid the locally prevailing wage or even the actual wage being paid to similarly qualified employees. Are you willing to concede that this program needs to be better regulated with wage requirements and policing measures?

I am not aware of widespread misuse of OPT. OPT has a very different purpose than the H-1B program; it is part of completing a degree to gain practical experience directly related to the field of study. There are time and subject-matter restrictions that limit the program. To the extent reforms are needed, they should be implemented while keeping in mind what the rest of the developed world does concerning foreign student talent at universities. We also must recognize our interest in retaining the talent of those we invested in and educated. One smart fix would be to allow "dual intent," so that talented foreign students are not blocked from the green card process. If we are serious in saying that it makes no sense to educate bright young minds and then send them abroad to compete with us, then we shouldn't make them promise to leave as a condition of getting their visa.

7. Do you agree that the "B in lieu of H" visa, AKA B-1 Business Visitor Visa, is another problem that, at the very least, needs fixing through the development of guidelines clarifying the scope of activities permissible given that immigrants with this classification are typically employees of foreign IT consulting companies who are being sent to the U.S. to perform services for a U.S. client company?

Doesn't this fact seem to fly in the face of the intended purpose of the program?

A miniscule subset of B-1 visas are issued for admission as "B in lieu of H," so it is not clear to me that there is a problem. Moreover, consular posts and U.S. Customs and Border Protection have procedures in place to combat against potential abuse.

Response to Questions from Senator Richard Blumenthal

Would transparency help?

Two witnesses at this hearing pointed in their testimony to a lack of publicly available information on nonimmigrant worker programs. In fact, some of the analysis discussed at the hearing involved data that was available only through FOIA, a process I know can be slow, difficult, and expensive.

The hearing discussed a number of incidents of apparent abuse of nonimmigrant visa programs for high-skilled workers. These abuses raise the obvious question of whether the American people are seeing an indication of systemic problems or a small number of unscrupulous companies abusing fundamentally sound programs. And it is worth pointing out that the potential for abuse goes beyond visa programs targeted at high-skilled workers. If anything, visa programs that allow employers to bring in workers without significant skills lend themselves even more to abuse.

Whether your goal is reforming nonimmigrant visa programs or simply rebuilding Americans' confidence in these programs, increased transparency could be an important part of the solution.

a. In your view, would it help to make more information regarding nonimmigrant worker visa programs available to the public without the need to rely on the FOIA process?

b. Can you talk about what kinds of data should be made available and how such data could be used?

I would certainly welcome greater transparency with respect to government-provided data about nonimmigrant worker visa programs—provided that the privacy concerns of workers are fully protected, that the government does not impose intrusive individual data requests (as they have initiated and had to retract in the recent past), and that no data about individual employers and employees are publicly disclosed.

I would counsel against instituting new reporting requirements without Congress having undertaken a serious analysis of the information already available, and the specific purposes additional information is designed to serve. It would be helpful to obtain data regarding the geographic location of H-1B petitioning companies and H-1B visa recipients; information about the degree earned, including whether the degree was awarded by a U.S. university; and data regarding the industries for which H-1B petitioners are seeking workers. When pooled together, the aggregate data about geography, educational profiles, and industries would help us to better understand the demand for skilled labor throughout the United States and whether or not the actual H-1B visas awarded are adequately meeting that geography of demand for skills.